

“Locked up
and
Forgotten?”

A CONFERENCE ON PENAL REFORM
IN DEVELOPING COUNTRIES

October 6-7 2010 • Police Staff College, Mirpur, Section 14, Dhaka, Bangladesh

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The CD attached with the report includes conference information, conference report in pdf, Dhaka Declaration in pdf, and profiles of BLAST, BRAC, IRSOP and MLAA

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Conference on Penal Reform in Developing Countries: “Locked up and Forgotten?”

Dhaka, Bangladesh - October 6-7, 2010

INTRODUCTION

In 2008 discussions took place between the Government of Bangladesh and the German Government to jointly undertake a pilot project on reducing the chronic overcrowding in Bangladesh prisons. The project drew on international good practices and aimed to work within existing laws and regulations, most of which are a legacy from the British Colonial era and over 150 years old. Joint initiatives included conducting a census of the prisons, utilizing a Public-Private Partnership to pilot a paralegal program in three prisons and establishing both local case coordination committees and an advisory committee of senior actors within the criminal justice

system. Results include the release of more than 700 people who were detained unnecessarily in one year. Data also reveals an increase in prisoners receiving bail and legal aid and a decrease in prison inflow and detention of innocent people in prisons at the pilot sites.

On October 6th and 7th, 2010 the Government of Bangladesh through the Ministry of Home Affairs, in partnership with Bangladesh Legal Aid and Services Trust, BRAC and Madaripur Legal Aid Association, hosted an international conference titled “Locked up and Forgotten?” in Dhaka, Bangladesh. The conference was supported by the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH.

The inaugural session of the conference heard speeches from the Minister of Home Affairs, the Minister of Law, Justice and Parliamentary Affairs, the Home Secretary, the Ambassador for the Federal Republic of Germany and the Inspector General of Prisons. Over 100 participants, including academics, judges, lawyers, paralegals, police and prison commissioners from Bangladesh, Germany, India, Malawi, Nepal, Pakistan, South Africa, Sri Lanka, the United Kingdom and the United States were in attendance.

The keynote speech was delivered by Dr. Kiran Bedi, the well known penal reformer from India and winner of the Ramon Magsaysay Award for her work. She reminded participants - "Society is judged by how it treats its children, women and prisoners."

The conference focused on three key aspects of the penal system that have repeatedly been shown to impact upon whether those who are locked up are also forgotten: prison overcrowding, legal aid and prison legislation.

Internationally renowned experts made presentations on the intricacies of each of the topics and conference participants divided into working groups to share best practices and develop strategic recommendations.

Deliberations at the conference also produced the 'Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia', which was adopted by consensus at the closure of the conference. At the request of the conference participants, the declaration will be forwarded to national governments in the region, the United Nations Commission on Crime Prevention and Criminal Justice and other relevant regional bodies.



Best Practice

On any given day the United Kingdom does not admit more people into prison than it has space for, forcing it to utilize alternatives to incarceration.

Overview of Conference Topic

Prison Overcrowding

The prisons of Bangladesh were designed to accommodate a maximum of 28,969, but now house 74,042 persons (256% of capacity). Experience from other countries indicates that this degree of overcrowding can be a contributory factor to increase radicalization and crime rates. It is also a public health hazard: the tuberculosis rate inside the prisons is twenty-one times that of the general population. Almost all of the people detained in the prisons are poor, and 73% are untried and thus legally innocent. Many have been in prison awaiting trial longer than the maximum sentence for the crime with which they are charged. Others have served their term for an immigration violation but cannot be released until another country agrees to

accept them. There are also many who are in clear need of social services such as children, women and others held in safe custody, the chemically addicted and the mentally ill.

Legal Aid

Key concerns within the penal system, including overcrowding, prison conditions and ill treatment, can be addressed through legal aid. Legal aid is especially important for protecting the rights of vulnerable groups such as under-trial detainees, terminally and mentally ill, children, women, foreign nationals, and others held in safe custody. Many more people are entitled to free legal aid in Bangladesh than receive it, which could be rectified in part through the use of Public-Private Partnerships. The government has a legal aid scheme which is intended to provide free legal services to the poor and marginalized, and is



Lesson Learned

Despite reducing the number of people awaiting trial from 45% to 17%, Malawi's prisons remain overcrowded. An effort to reduce prison overcrowding must focus on both the under-trial and sentenced prison population.

being re-activated, but remains severely underutilized. Numerous NGOs throughout the country also provide free legal services for those in need. In addition, anyone accused of a crime that carries a death penalty has an inalienable right to an attorney.

Prison Legislation

Antiquated prison legislation can obstruct the promotion of justice and human rights. Numerous countries have, or are in the process of, modernizing prison legislation to meet their obligations under human rights treaties, incorporate best practices from around the world and eliminate ineffective (or detrimental) provisions. Key policy issues that need to be re-examined include what services should be provided to enable prisoners to ease back into the community, what constitutes

“adequate” health and nutrition, how to ensure the minimum amount of force is used to maintain security and what inspection mechanisms should be established. International trends have included moving prisons from the Ministry of Home Affairs/Interior to the Ministry of Justice, developing alternatives to prison based on restorative justice principles and utilizing risk assessment procedures for sentenced prisoners.



Lesson Learned

Justice Munim cautioned in the 1980 Jail Commission Report that “building of more prisons cannot be expected to reduce the overcrowding inside the prison.” The United States proved him right when its effort to build its way out of prison overcrowding resulted in more than 1% of the population being held behind bars.

Case Study

Delhi Prison

Delhi Prison had over 10,000 prisoners in a neglected institution built for 4,000 when Dr. Kiran Bedi was appointed Inspector General. It was ridden with corruption and violence, making it a breeding ground for crime. Rather than allow herself to be hindered by the constraints of infrastructure, regulations and budget, she rebuilt the mentality of the prison on three pillars: collective, corrective and community based. Soon the prison raised self-worth and enabled reintegration inside its walls and reduced crime and recidivism outside. Some of the initiatives she recommends for replicating the success include:

- Develop a mission statement and core three themes (mantras) for both the management and the prisoners. In Delhi Central the mission statement was "to provide and ensure wholesome well-being and everything that it takes to achieve it" and the three mantras were: 1) "enable wholesome preparation for reintegration"; 2) "practice happiness to spread happiness"; and 3) "to save the next victim."
- Walk the grounds every morning and use the time to reach out to the prisoners.
- Provide the prisoners an anonymous means to communicate with the Inspector General and address the concerns that are raised. She recommends a locked wooden box.
- Education! Ask schools to donate books and supplies, embassies to provide language instruction, NGOs and retired professionals to teach lessons and universities to provide free remote learning.
- Reduce physical suffering by allowing doctors from the community to volunteer their services.
- Promote religious tolerance and develop a sense of community by celebrating festivals from all religions.



Prison Overcrowding

1. There are too many arrests, especially ones that are based on insufficient evidence or are used to harass or extract money
2. There are inadequate options for diverting a person from prison
3. Too many people, particularly the poor, are held in prison awaiting trial
4. Prisons are used in lieu of social services, such as for the mentally ill, women and others held in safe custody, children and the chemically addicted
5. There is a lack of coordination between the police, courts, prisons and other relevant actors

6. The use of prison is unquestioned by society
7. Judges routinely give the maximum sentence

Legal Aid

1. The majority of people within the criminal justice system cannot afford a defense and are unable to access free legal services
2. The benefits of a Public-Private Partnership for providing legal services are not fully exploited
3. Courts and lawyers are not moving cases efficiently, especially for the poor
4. There is little oversight of the quality of legal aid provided
5. Few prisoners entitled to bail are released on bail
6. The principle of innocent until proven guilty is not enforced



Best Practice

To reduce trial delays, a District Judge in South Africa cannot keep a case for more than a year without justification.

Prison Legislation

- 1. The current legislation is antiquated
- 2. Prisons do not promote rehabilitation or reintegration
- 3. The conditions within the prison fall short of minimum human rights standards
- 4. The complexity of the current provisions makes it difficult for the law to be understood and uniformly applied

RECOMMENDATIONS

Prison Overcrowding

- 1. Prison inflow must be controlled.
 - (a) Reduce the number of people who are arrested by decriminalizing petty offences, repealing status offences and limiting police powers to arrest on suspicion.

(b) Divert appropriate cases immediately to alternative dispute resolution (ADR), restorative justice programs or other community based options.

(c) If a person is arrested, grant bail at the moment of arrest unless legitimate reasons justifying the decision to deny bail are committed to writing.

(d) Develop effective rehabilitation options, such as drug treatment, mental health services, social services and restorative justice, to divert people from the criminal justice system whenever possible.

(e) Take measures to ensure that children, the mentally ill and people in safe custody are never held in prison.

- 2. When prison is deemed the only appropriate option, sentences should be based on an individualized assessment of a person's risk of re-offending and the socio-economic factors that led to the offence rather than the offence itself.



Best Practice

In Nepal, juveniles are offered the opportunity to suspended their sentence by attending school regularly for two years.

The priority of the prison should be rehabilitating the prisoner based on the factors identified in the prisoner's needs assessment. A system must be put in place to facilitate early release for appropriate cases.

3. The police, prisons, courts and other relevant actors must meet regularly to coordinate cases and manage overcrowding. Particular attention should be paid to ensuring that prisoners are produced at trial and the trial does not exceed the maximum time prescribed by law.
4. There should be a streamlined means by which prison authorities and paralegals can raise all concerns regarding the legality of the incarceration of prisoners, such as age determinations or the validity of the statute under which a person is charged.
5. Legal aid service providers should fully utilize the existing legal remedies for reducing the number of people in

prison, such as requesting bail at the earliest opportunity, insisting that trial dates be set (rather than have cases “on-call” or “unheard”), demanding trials conclude within the legally prescribed length of time, enforcing custody time limits, and, when appropriate, counseling the client on the option to plead guilty/plea bargain. In the case of young people, measures should be taken to accurately determine age and ensure juveniles receive the special protections afforded to them by law.

Legal Aid

1. Legal aid should be broadly defined to include all legal services.
2. Legal aid should be available to any person deprived of their liberty.
 - (a) Legal aid must be provided through all stages of the criminal justice system – from arrest to release. Special



Best Practice

Experience has shown that rehabilitation does not work unless the prisons have the prisoner for at least two years. Therefore, in Germany most sentences of imprisonment of less than two years are suspended.

attention should be paid to ensuring that legal aid is available at police stations, where a legal aid service provider can ensure a person is being detained on legal grounds, there is sufficient evidence to justify the deprivation of liberty and statements are taken without the use of violence or coercion.

(b) People deprived of their liberty outside the penal system, such as those held in asylums, safe custody and correctional facilities, must also be provided with access to legal aid.

(c) All actors within the criminal justice system, including the police, court officers and prison guards, must be trained on the importance of legal aid and take responsibility for finding legal representation for any unrepresented person deprived of his/her liberty.

(d) The government should develop legal aid awareness campaigns to ensure that all citizens are aware of the services provided and empowered to access them.

(e) The application process for legal aid under the Government Legal Aid Scheme should be simplified to ensure decisions are made quickly, consistently and justly. Priority should be given to vulnerable persons.

3. Legal aid services should be provided by qualified legal service providers who are professionally bound to represent their client's best interest.

(a) Quality control measures must be undertaken by legal aid service providers to determine whether panel lawyers are qualified to take cases and provide speedy delivery of services.

Best Practice

To rectify prisoners not being produced in court on specified days, India set up a video link between the prisons and the courts. In Pakistan, camp courts have been set up in the prison courtyards.



(b) All stakeholders must receive regular training on providing effective legal aid services. Trainings should include working with women, juveniles and clients with special needs.

4. The supply of legal aid services must meet the demand.
 - (a)** All district legal aid committees (DLACs) must be held responsible for providing legal aid services within their jurisdiction. A system must be in place to monitor whether legal aid is being provided to everyone who needs it.
 - (b)** Public-Private Partnerships to provide legal aid services need to be coordinated and strengthened between the government (especially the DLACs), NGOs, the bar association and law schools.
5. Public Interest Litigation should be used as a tool to catalyze administrative change for improving conditions in

prison, challenging illegal practices and obtaining the release of those wrongfully detained.

Prison Legislation:

New prison legislation must be drafted that:

1. Is humanizing, reformative, preventative and in harmony with human rights principles, the guiding international legal framework and the 1980 Munim commission report.
2. Recognizes that the loss of the right to liberty should not automatically lead to prisoners losing all other rights. It should proactively afford prisoners the rights to legal aid, health care, proper nutrition, adequate clothing and bedding, exercise, hygiene, maintain family relations, education (including higher education), vote, apply for government jobs, obtain information, practice their religion and be treated with respect and dignity.



"Lack of resources is no excuse for poor treatment. The moment a government locks someone up they assume a duty of care."
Adam Stapleton

3. Is developed in consultation with the public.
4. Commits Bangladesh to aim prisons to the goals of rehabilitation and reintegration of offenders. Specific measures should:
 - (a) Provide incentives for prisoners: good behavior earns greater access to the community and early release.
 - (b) Mandate that a prison stay is specifically tailored to each inmate's demonstrated needs through tools such as sentence planning, risk classification and prisoner assessment systems.
 - (c) Require prison authorities to be civilians and explicitly set forth that the prison authorities play a key role in facilitating the rehabilitation and reintegration of prisoners into society.

- (d) Allow for capacity building opportunities on implementing the prison legislation for the prison authorities.
- (e) Make provisions for prisoners with special needs, including persons with disabilities.
- (f) Ensure that prison authorities are held accountable if the human rights of prisoners are violated.
- (g) Include a mechanism to receive and respond to complaints.
- (h) Invite international and national inspections to monitor against abuse and deterioration in conditions.
- (i) Consider the appointment of an independent and effective Prisons Inspectorate reporting to Parliament.

Best Practice

In Malawi, court sentencing is based on a pre-trial assessment by social workers and paralegals (rather than police) that includes the risk of re-offending and recommendations for rehabilitation.



Positive steps towards attaining penal reform are already being implemented in Bangladesh and other countries in South Asia. The recommendations presented in this report are being developed into a training manual that will be distributed throughout the region. The Dhaka Declaration will be sent to national governments in the region, the United Nations Commission on Crime Prevention and Criminal Justice and other relevant regional bodies. SAARC countries will be encouraged to use the materials to develop 'plans of action' for implementing the recommendations.

In Bangladesh, multiple innovative reform measures are emerging. The Prison Directorate is writing its first ever

strategic plan. The Ministry of Home, Ministry of Law and the Law Commission are in dialogue around issues affecting prisons. The Government has expressed an intention to replace the current prison laws and regulations with one in line with international human rights conventions to which it is a signatory. The Ministry of Home wants to replicate the successful "Improvement of the Real Situation of Overcrowding in Prisons in Bangladesh" approach to penal reform in other selected districts. Despite the considerable strides towards penal reform, much work needs to be done. Continued Public-Private Partnerships to stimulate change in the penal system throughout South Asia are necessary to promote justice, reduce crime and ensure that no one is locked up and forgotten.



"To effect prison reform in the future there is need for formulation of comprehensive policies and principles. Such formulation should not merely embrace the Prison Department but also the entire criminal justice system which includes the agencies for prosecuting the criminal and courts."

Promita Sengupta

quoting from the 1980 Munim commission report

Annex: Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia

107 delegates from five South Asian Countries (SAARC) met on 6th -7th October, 2010 in Dhaka, Bangladesh to discuss overcrowding in prisons in the region, prison legislation and legal aid services in the criminal justice systems in South Asia. The conference was opened by both the Minister of Home Affairs and Minister of Law, Justice and Parliamentary Affairs. The participants included judges, lawyers, senior prison management and academics, along with international, regional, and national non-governmental organizations who attended the conference. The two days of deliberations produced the Dhaka Declaration on Reducing Overcrowding in Prisons in South Asia (set forth below) which was adopted by consensus at the closure of the conference, with the request that it be forwarded to national governments in the region and to the United Nations Commission on Crime Prevention and Criminal Justice.

Preamble

Recognising that prisons are increasingly overcrowded in many of our countries and that the conditions for those living and working in prisons are poor;

Recognising further that alternative sanctions to prison are limited in practice; and that many women and men await their trials in prison because they are too poor to access legal advice or meet the terms set by the court for bail; moreover, that a significant contributor to overcrowding in the region is often excessive and arbitrary use of pre-trial detention;

Mindful that those in prison include the mentally ill and chemically addicted in need of specialist treatment; the weak and vulnerable, including persons with different abilities, children (girls or boys), women with particular needs and characteristics; as well as the poor and marginalized in need of appropriate legal assistance;

Noting that prison should be a remedy of last resort reserved for those who are a present threat to society and that the use of imprisonment has drastic consequences for the families of those detained and their communities;

Bearing in mind that prison conditions and management systems should respect the dignity of the person and that the essential aim

of prison is to rehabilitate offenders back into society in line with the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international human rights instruments ratified by SAARC countries;

Recalling the minimum standards laid down in the United Nations Standard Minimum Rules for the Treatment of Prisoners; and the emphasis on restorative justice approaches in appropriate cases set out in the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules);

Having regard to the regional efforts for the promotion of basic rights of prisoners, as considered by the Pan-African Conference on Penal and Prison Reform in Africa, held in Ouagadougou from 18-20 September 2002, and the Latin American Conference on Penal Reform and Alternatives to Imprisonment, held in San Jose from 6-8 November 2002, and pursued by the African Union and the Organisation of American States, as well as the Asian Conference on Prison Reform and Alternatives to Imprisonment, held in Dhaka from 12-14 December 2002;

Commending the practical measures that have been taken by concerned authorities in South Asian countries, including judiciaries and prison authorities, to apply these standards in their national jurisdictions;

Recognising that notwithstanding these measures there are still considerable shortcomings in the treatment of prisoners, which are aggravated by shortages of facilities and resources;

Welcoming the growing partnerships between Governments, international development community, non governmental organizations, universities and civil society in the process of implementing these standards;

Emphasising the importance of a criminal justice policy that seeks to prevent crime while at the same time limiting the growth of the prison population and encouraging the use of alternatives to imprisonment such as community-based sanctions and measures, where appropriate, implemented through a prolonged and concerted strategy of penal reform.

We, the participants at the Conference on Penal Reform in Developing Countries, held in Dhaka, Bangladesh, between 6-7 October 2010, hereby affirm that the following elements should be included in any penal reform strategy to reduce prison overcrowding:

1. As imprisonment is a sanction or measure of last resort, it shall only be used when the seriousness of the offence would make any other sanction or measure clearly inadequate.
2. As pre-trial detention is a measure of last resort, it shall be used only in accordance with international standards and norms which dictate that the application of pre-trial detention occurs in a transparent and rational manner.
3. Increasing prison capacity shall not be adopted as a long term solution to the problem of prison overcrowding.
4. The following specific steps shall be taken to reduce overcrowding:
 - (a) Minor offences, where appropriate, shall be diverted away from the criminal justice system to alternative modes of resolution applicable in all our societies.
 - (b) Pre-trial/under-trial detention shall be used less frequently and for shorter periods. Alternatives to pre-trial detention shall be made available in law and sufficiently funded and practised. Custody time limits shall be set down and enforced by the court.
 - (c) Non-custodial measures shall be used wherever possible.

- (d) Where a sentence of imprisonment is unavoidable, regard shall be had to the period of time an accused person may already have spent in pre-trial detention; and the sentence passed shall be for the shortest possible time period.
- (e) Early release, whether conditional or unconditional, shall be allowed wherever it is justifiable to do so, including parole.
- (f) Chemically addicted, mentally disordered and other seriously ill offenders shall be treated.
- (g) Special arrangements shall be made to keep young offenders out of adult prisons as well as other closed institutions.
- (h) Under no circumstances shall anyone be held in prison on the pretext of 'protective' or 'safe' custody.
5. The following measures shall be introduced to assist in taking the specific steps to reduce overcrowding:
- (a) The operation of the criminal justice agencies shall be co-ordinated so that they work together in combating overcrowding.
- (b) Legal services (including law students and paralegals) shall be made available in all prisons and at all stages of the criminal justice system.
- (c) Constructive alternatives to custodial sanctions and measures shall be developed and applied at the pre-trial, trial and post-trial stages as an effective alternative to custody and preventing crime.
- (d) The public shall be informed of the steps taken to reduce prison overcrowding and the reasons for doing so.
- (e) Prison administrators shall develop effective means to measure and track the number of people and the length of time they have been incarcerated both pre- and post-trial.
- (f) Foreign nationals held in prison for immigration reasons or after any sentence has expired shall be repatriated to their home countries.
6. Where conditions of overcrowding persist in prison, special care shall be taken to ensure that all prisoners are still treated with human dignity and constant monitoring shall be undertaken by a national prison inspection mechanism.
7. We request that this Declaration be forwarded to the SAARC governments for their attention and urge each country to develop a Plan of Action in line with good practices developed in the region and from elsewhere to reduce prison overcrowding. We further request that this Declaration be sent to the UN Commission on Crime Prevention and Criminal Justice.

Dhaka
7 October, 2010

Improvement of the Real Situation of Overcrowding in Prisons in Bangladesh

A joint project of Bangladesh Ministry of Home Affairs and Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH



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